Marks Paneth & Shron LLP
Certified Public Accountants & Consultants

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WHAT YOU SHOULD KNOW ABOUT FORMS OF JOINT OWNERSHIP

What's the best way to hold title to real estate? Some forms of ownership can increase legal liability, enlarge your tax burden, and subject an estate to probate. In contrast, choosing the right ownership form can reduce red tape while improving a property's profitability.

Holding joint title to real estate

Although property ownership rules vary from state to state, some basic principles apply in most jurisdictions. Following is an overview of some common methods for jointly holding title to real estate, together with their pros and cons:

Tenancy in Common (TIC). TIC is often employed when two or more owners take title to real estate. This form of ownership is common where the co-owners aren't married or have contributed different amounts to the acquisition of the property. One advantage of TIC arrangements is the ability for each party to own a specific, unequal share. When one of the owners dies, that owner's share of the property passes according to the terms of his or her will or trust. Because a TIC arrangement allows spouses to bequeath their share in a property to children from a prior marriage, this form of joint ownership is also popular among couples in second marriages.

Serious trouble can arise, however, if the inheriting co-owner doesn't get along with the other owners. An unhappy owner can force the sale of the property whether or not the other owners agree. When an owner files a "partition lawsuit," the court orders the property sold and divided among the owners. In addition to this disadvantage, TIC arrangements are subject to probate costs and related delays.

Joint tenancy with rights of survivorship (JTRS). JTRS is popular among married couples because it allows husbands and wives to hold title with the right of survivorship, where the surviving joint tenant automatically receives title without the property having to go through probate. He or she needs only to produce a certified copy of the death certificate and record an affidavit of survivorship. The will of the deceased has no effect in such cases, because ownership is conveyed through the title.

JTRS arrangements don't allow for different degrees of property ownership; all tenants hold an equal undivided interest in the property. Another drawback is that JTRS allows one tenant to convey his or her share in the property without approval of the others. As in the TIC arrangement, a joint tenant can bring a partition lawsuit and force the sale of a property.

A few states have mitigated these disadvantages by creating a "joint tenant by the entireties" ownership option for married couples. Under this variation of JTRS, spouses can't transfer ownership of their share without the signature of their marriage partner.

Community property. Community property laws allow each spouse to own 50% of a property and pass his or her share (through a will or trust) to the designated person of his or her choice. Community property ownership provides a major tax advantage: when one spouse dies, his or her 50% interest is transferred at market value on the date of death, even if it goes to the surviving spouse. This stepped-up basis reduces capital gains exposure when the property is sold.

Couples living outside community property states can still enjoy the benefits of stepped-up basis. To do so, they must hold the property in joint tenancy and acknowledge in writing to each other that the joint tenancy property is also community property.

Community property as a form of ownership is available in 10 states and some other jurisdictions. (Check with your MP&S advisor for the current list.)

What to do?

Unless you set up a living trust or other property-holding entity (such as a family limited partnership or limited liability company), any property you own jointly will fall under one of the default forms of joint ownership described above. Although joint ownership methods may be fine for holding your residence, they may not be ideal for holding real estate investments. And keep in mind that many real estate professionals own property through limited partnerships, limited liability companies and S corporations — all of which are beyond the scope of this article.

The best advice is to consider the method of ownership before you take title. A bit of planning can go a long way toward saving money and avoiding legal surprises in the years to come.

Living trusts

One way to hold titles to personal residences and other major assets is with a living trust (also called a revocable or inter vivos trust). Property placed in a trust avoids probate costs and delays, and it can be managed, bought and sold just as easily as under other ownership options. (See main article.) The grantor (the property owner who transfers property to the trust) can even serve as trustee. Living trusts can be amended or revoked as needed and alternate trustees can take over asset management if the grantor is unable to manage his or her affairs. When the grantor dies, assets are distributed according to the terms of the trust.

Privacy is a major advantage of living trusts. While a will becomes part of a public probate file, living trust terms remain private in every state except South Dakota.

PROPERTY MANAGEMENT STRATEGIES FOR TODAY'S ECONOMY

As the weak economy continues, real estate owners are taking a hard look at ways to maximize their portfolios. While some developers self-manage, others are focusing their search on streamlined processes and cost-cutting measures. Here are two of the best strategies that can help to achieve these goals.

1. Find a good property manager

If your ultimate retirement goal is to have very little management involvement, finding a stellar property management firm may be the best option. Choosing a manager is an important decision — almost as important as selecting a property.

As in most professions, experience counts. The more time a property management firm has spent in the business *and* in the community, the better equipped it should be to handle your property's operation. Choose a firm that understands the local market and that has a proven track record for your property type and established relationships with local brokers.

The firm should be able to clearly describe their normal tenant screening, collection and eviction procedures. If their procedures match up with your management style, you may have a winner. But you'll also need to scrutinize the management firm's fee structure. In sorting through fees, it's important to balance your desire to minimize expenses with paying a fee that enables the company to do its job well.

A good property management company should have a contingent of qualified contractors in place to handle maintenance and repairs. If you want to be able to specify that certain contractors be

used on your property, be sure to get it in writing. The property manager should also have a plan — and proven record — for curtailing costs while keeping the tenant base happy.

As part of your homework, check out the reputation of every firm you're considering. Ask for references, and then take the time to call each one. Once you find a good firm, look for a manager within that firm whom you like personally; the relationship between owner and manager can last for decades, so choosing someone that you can easily communicate with is important.

2. Streamline your business with Web-based property management software

Many landlords are turning to innovations such as Web-based lease applications and maintenance request systems to streamline their businesses. E-procurement systems, which make purchasing goods and services easier, faster and less expensive, are also popular. These applications can help property managers accurately track purchases and spending limits.

Automatic rent payments can be particularly helpful in reducing management costs. Landlords can benefit from lower administrative overhead, increased accuracy, fewer late payments and quicker availability of funds. Electronic rent payments often involve an automatic rent deduction from the tenant's checking account each month. Many landlords now also accept credit card payments, an option some tenants like because of the rewards they can earn. Electronically scanning rent checks for immediate deposit is another popular time-saving (and cash-flow enhancing) option.

Web-based property management software can help streamline management functions by organizing information in ways that can be quickly retrieved and analyzed. Prospective tenants can view available units and submit lease applications through the property's Web site, while residents can request repairs and view their status online. Property management software should also interface with the landlord's accounting system. If electronic rent payments are being accepted, the landlord can view instant, up-to-date information about rent received, late rent payments, maintenance costs and a number of other important factors.

Good property management software can also help you manage vacancies and can automatically charge late fees after a certain date. In addition, property-related expenses, repair orders, contractor bids and work completed can be managed and quickly tracked via the software.

Finding what's best for you

In the final analysis, the best options for cost-effectively streamlining the management of your real estate investments will be unique to your needs. Your financial advisor can offer other tips for saving money on property management and protecting your investments in the current economy.

SPOTLIGHT ON MP&S

Accounting for Reorganization Value - Fresh Start Reporting

In an *ABI Journal* article, **John M. Bonora**, a director in the Marks Paneth & Shron **Litigation and Corporate Financial Advisory Services Group**, discusses the business challenges and opportunities of fresh-start reporting as well as the many closely-timed steps required to implement the process.

Tax Issues Related to Business Locations

Anyone who has faced the challenges of launching a new business in the U.S. understands that the process is not simple. With myriad issues to grapple, the decision of *where* to form the new entity, while critical, is often overlooked. In a recent ***Law360*** article, **Sol Packer, CPA, JD, LLM,** senior consultant in the **Tax Group** at Marks Paneth & Shron, examines the tax issues that must be considered when weighing the options of where to establish a new entity.

Advice to US Taxpayers on Disclosure of Offshore Accounts

In a recent *Financial Fraud Law Report* article, **David Gannaway**, a director in the firm's **Litigation and Corporate Financial Advisory Services Group**, advises US taxpayers and professionals on best practices for disclosing offshore accounts.

MP&S Climbs to Top Spots in National and Regional Rankings

Marks Paneth & Shron has been named one of the 10 fastest-growing accounting firms in the nation by *INSIDE Public Accounting,* which also ranked the firm 31st largest in the US.

Locally, the firm also achieved top ranking by the *Westchester County Business Journal,* which has named MP&S as the 7th largest firm in Westchester County.

Partner Warren Ruppel Is President-Elect of the Board of Trustees of the Foundation of Accounting Education of the NYSSCPA

MP&S announces that **Warren Ruppel**, a partner in the **MP&S Nonprofit and Government Services Group**, has become the President-Elect of the Board of Trustees of the Foundation of Accounting Education (FAE) of the New York State Society of Certified Public Accounts (NYSSCPA). The FAE offers CPAs a diverse array of events featuring continuing professional education seminars, conferences, technical sessions, trade shows and special events throughout New York State.

ASK THE ADVISOR

How can I know if a foreclosed property is a good investment?

Although the sheer number of foreclosures has tempted many people to become foreclosure investors, it's not as easy to make a buck in this market as it may seem.

Be ready to dole out some cash

By the time a property enters the foreclosure process, it's probably in sorry shape. Although you may be able to snap it up for a reasonable price, you'll likely be investing thousands of dollars in the property to make it salable.

There also might be liens on the property, such as real estate tax liens. To gain clear title, any mortgages will have to be paid and liens released. Be sure there's enough value in the property to cover these outstanding debts. Without clear title, you might not be able to sell or mortgage the property.

Know where to look for deals

One alternative is to buy bank-owned foreclosed properties. They often include title insurance, which is your certification that a property doesn't have any liens on it. Because banks are usually eager to jettison the properties, you can probably negotiate a favorable interest rate and loan-to-value ratio.

Another option is to find property at risk of going into foreclosure. When a property owner falls behind on mortgage payments, the lender issues a public notice of default. The owner then has from 90 to 120 days, depending on state law, to bring the loan current. During this period, owners are often willing to sell at bargain prices.

Be aware of commercial property risks

For commercial property, assess its revenue-generating capabilities. In the case of retail property, pore over leases and rent receipts to determine whether it's a going concern and which tenants may have contributed to the previous owner's woes.

If the property is in the warehouse or industrial sector, look at leases, rent receipts and company financials to determine whether the tenant has risk factors that you need to evaluate.

Jump in … but with caution

Performing due diligence is critical. Make sure you request the last 5 years tax returns, all repairs and maintenance contracts, real estate tax bills, management agreements, financial statements, if available, and up-to-date title policies. For condominium and multifamily markets, obtain a certificate of occupancy and information on tenant mixes. For all property types scrutinize every

existing lease to determine tenant obligations and your continuing obligations. Perform your own UCC search for any outstanding liens, claims and assessments.

Also examine area demographics, competing rental and occupancy rates, availability of similar properties, proposed and renovated properties, new building permits, environmental status of the property and adjacent properties, and applicable zoning and usage regulations.

FOR FURTHER INFORMATION

If you have any questions, please contact **Harry Moehringer,** Partner-in-Charge of the **Real Estate Services Group** at 212.503.8904 or hmoehringer@markspaneth.com or any of the other partners in the MP&S Real Estate Services Group:

- Timothy Andrews
  tandrews@markspaneth.com
- Vincent Barra
  vbarra@markspaneth.com
- Steven Brass
  sbrass@markspaneth.com
- Arthur Cannata
  acannata@markspaneth.com
- Patrick Coccodrilli
  pcoccodrilli@markspaneth.com
- Robert Feldman
  rfeldman@markspaneth.com
- William Jennings
  wjennings@markspaneth.com
- Susan Nadler
  snadler@markspaneth.com
- Abe Schlisselfeld
  aschlisselfeld@markspaneth.com
- Steve Schochet
  sschochet@markspaneth.com
- Michael Siino
  msiino@markspaneth.com
- Howard Warshaw
  hwarshaw@markspaneth.com

Additional information on the Marks Paneth & Shron Real Estate Services Group can be found at **www.markspaneth.com.**